NADIMUTHU v. PUBLIC PROSECUTOR

[F.C. (Suffian, Gill and H. S. Ong F.JJ.) October 6, 1973]
[Kuala Lumpur — Federal Court Criminal Reference No. 4 of 1973]

Interpretation — Receipt, account or other document — Meaning of "document" — Ejusdem generis rule — Whether medical certificate a document within the meaning of s. 4(c) of the Prevention of Corruption Act, 1961.

Bribery and Corruption — Medical certificate — False — Whether a "document".

This was a reference to the Federal Court on the following question —

"Whether a medical certificate used in the circumstances described in the judgment in Selangor Criminal Appeal No. 25 of 1972 ([1972] 1 M.L.J. 74) is a 'document' within the meaning assigned to it under section 4(c) of the Prevention of Corruption Act, 1961".

The appellant who was an employee of the Malayan Railways had been charged and convicted on two charges of knowingly using with intent to deceive his principal, sick certificates which contained statements false in material particulars, which to his knowledge was intended to deceive his principal, constituting offences under the Prevention of Corruption Act, 1961.

Held: as in this case the certificates were clearly used to claim monetary benefits to which the applicant was not entitled, they were "documents" within the meaning of section 4(c) of the Prevention of Corruption Act, 1961.

Cases referred to:-

(1) *Public Prosecutor* v. *Kyle-Little & Anor.* [1971] 1 M.L.J. 125 at p. 127.
(2) *Rex* v. *Daye* [1908] 2 K.B. 333 at p. 340.
(3) *Hill* v. *Reg.* [1945] K.B. 329 at p. 333-334.
(4) *Sage* v. *Eicholz* [1919] 2 K.B. 171 at p. 175-176.

FEDERAL COURT.

K. Chandra for the applicant.

Anuar bin Zainal Abidin (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim F.J. (delivering judgment of the Court): This is a reference under section 66 of the Courts of Judicature Act, 1964 by the applicant for the determination by this court of a question of law of public interest, namely:

"Whether a medical certificate used in the circumstances described in the judgment in Selangor Criminal Appeal No. 25 of 1972 is a 'document' within the meaning assigned to it under section 4(c) of the Prevention of Corruption Act, 1961."

The applicant had been charged on two charges that on two dates in August 1968 he, as an employee of the Malayan Railways, knowingly used, with intent to deceive his principal, documents in respect of which his principal was interested, to wit, sick certificates purported to be from Lum Dispensary which contained statements false in material particulars in that he had been examined and found unfit for duty on the dates concerned by Dr. Lum Weng Song, which to his knowledge were intended to mislead his principal, thereby committing an offence under section 4(c) of the Prevention of Corruption Act, 1961. He was fined $25 on each charge by the Kuala Lumpur, Magistrate on February 14, 1972.

The applicant was paid wages for the two days he was certified unfit for duty on the strength of those certificates. Subsequently these certificates were found to be false in that 1) there was no registered practitioner by the name of Dr. Lum Weng Song 2) the phone number given on the certificates was that allotted to the J.K.R. Waterworks since 1958 and 3) suspiciously these certificates did not give the address of Lum Dispensary, the only Lum Dispensary being one run by a Dr. Foo Lum Choon at Jalan Pudu. The two days' wages paid to him were recouped, without protest from him, on the ground that the certificates had not been duly certified by a registered medical practitioner and his two days' absence was treated as no pay leave. His appeal against conviction and sentence was dismissed by the High Court at Kuala Lumpur on December 18, 1972, but the learned judge granted his application for a reference for determining whether a medical certificate is a document for the purposes of section 4(c) of the Prevention of Corruption Act, which reads:

"4. If —

x x x

(c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both."

For the applicant, it was contended that the Act being a penal statute, the rule of strict construction applies. There being no definition of "document" in the Act, the literal construction should be applied giving the words the sense which is their natural import in the order in which they are placed. Following the *noscitur a sociis* or *ejusdem generis* rule, the words "or other document" preceded by the words "any receipt, account", it is argued, should be confined to things of the same kind as those specified, and a medical certificate, though a paper-writing, could hardly be considered to be of the same genus as a receipt or account. In support, reference was made to *Public Prosecutor* v. *Kyle-Little & Anor*,[1] where the learned judge said:

"In the instant case, section 4(c) uses the words 'any receipt, account or other document'. To my mind, a distinct genus is apparent from the words used. The words 'receipt, account' would seem to possess this character, that is, paper writing dealing with money matters. Thus the words 'other document' I think, should be construed to refer to paper writing in the same category and possessing the same character as a receipt or account, for example, bills, cheques, indents, payroll and invoices."

In the case under reference, however, he said that the examples given in the case cited were not meant to be exhaustive. That a medical certificate is a document cannot be disputed. As Humphreys J. said, quoting Darling J. in *Rex* v. *Daye*,[2] in *Hill* v. *Regem*[3]:

"But I should myself say that any written thing capable of being evidence is properly described as a document and that it is immaterial on what the writing may be inscribed. It might be inscribed on paper, as is the common case now; ... I should say it is a document no matter on what material it be, provided it is writing or printing and capable of being evidence."

He went on to conclude that the medical certificates fell within the category of "other document" in section 4(c) as on the basis of these certificates the applicant obtained two days' wages to which he was not entitled and bore the character of a paper writing dealing with money matters.

Here we would refer to *Sage* v. *Eicholz*,[4] a case under the U.K. Prevention of Corruption Act, 1906 identical with our Act except that for the word "gratification" in section 4(a) and (b), the U.K. Act had the words "gift or consideration". It is convenient to set out a portion of the headnote before quoting the judgment of Bray J.:

"It was the practice of the Metropolitan Water Board to allow to the owners of house property a deduction from the water rates in respect of such portions of their property as had been empty during the quarter for which the rates were payable. The respondent, the owner of a block of chambers, handed to an agent of the Board a 'claim for empties,' in which he fraudulently represented that portions of the block had been empty for longer periods than was in fact the case, whereby he obtained a larger allowance than he was entitled to. The agent was not aware that the statements in the claim were untrue."

"Held, that the paragraph under which the respondent was summoned is not limited either by the title of the Act or by the context of the two preceding paragraphs to cases in which the defendant acts corruptly, and that neither the corruption or attempted corruption of the agent nor his knowledge of the falsity of the statement was a necessary ingredient in the offence charged."

Bray J. said:

"In this case the respondent called at the office of the Water Board and handed to a man named Fitt, a receiving officer of the Board, a document called a 'claim for empties,' and there was evidence from which the magistrate would be entitled to infer that that document contained a statement which to his knowledge was false and was intended to mislead the Board. The prosecution claimed that that evidence showed an offence under the third paragraph of section 1, sub-section (1), of the Prevention of Corruption Act, 1906. The magistrate without calling on the respondent for his defence ruled that no case had been made out within the section, upon the ground that there was no evidence that the agent had been corrupted or that there had been any attempt to corrupt him. He was of opinion that the operation of the Act was limited to the prevention of the corruption of agents, and he said that he was assisted in arriving at that conclusion by the title of the Act, which is 'An Act for the better Prevention of Corruption.' The question we have to decide is whether his decision was right. If the language of the section is quite clear and unambiguous it would not be right for us to alter its construction by reason of the title of the Act. Let us see what the section says. The first paragraph says: 'If any agent corruptly accepts or obtains' a bribe he commits an offence. It is clear that corruption is a necessary part of that offence. Then the second paragraph says: 'If any person corruptly gives or agrees to give' a bribe to an agent he shall be guilty of an offence. Corruption is necessary there. Then the third paragraph in the statement of the offence created by it contains no reference to corruption. The word 'corruptly' which is used in the first two paragraphs is deliberately omitted from the third. It says: 'If any person knowingly gives to an agent' — and here the magistrate has found that Fitt was an agent — 'any receipt, account, or other document in respect of which the principal is interested' — and it could not be disputed that the claim for empties was a document of that description — 'and which contains any statement which is false ... in any material particular' — there was undoubtedly evidence that it did contain such a statement — 'and which to his knowledge is intended to mislead the principal — there was equally no doubt that it was intended to mislead the Board — he shall be guilty of an offence. As the magistrate had evidence before him of all the facts which go to make up the offence he was wrong in holding that a *prima facie* case had not been made out, and he ought to have called upon the respondent for his answer. He said that in his opinion the word 'his' in the sentence 'which to his knowledge is intended to mislead the principal' had reference only to the agent and not to the giver of the document. In that I think he was wrong. In my opinion the word 'his' refers to each of them according as the one or the other is the party charged. In my view the words of the Act are perfectly clear and unambiguous. The word 'knowingly' is deliberately used in the third paragraph instead of the word 'corruptly,' and 'knowingly' does not necessarily involve any element of corruption. The substitution of the word 'knowingly' was probably made because of the great difficulty of proving corruption, and it was thought advisable in a case of the kind dealt with in that paragraph to make the act an offence whether it was done corruptly or not. Under those circumstances we have no right to restrict the plain meaning of the words merely because the Act is entitled 'An Act for the better Prevention of Corruption'."

In the same case Shearman J. said:

"This is another of those cases in which an attempt is made to cut down the plain meaning of a statute by referring to the preamble or the title. It has happened more than once that a certain abuse has brought a new statute into existence, which has proceeded to deal not only with that particular abuse but also with certain kindred abuses, and it has then been sought to restrict its application to the particular abuse which caused it to be passed."

These certificates were clearly used to claim monetary benefits to which the applicant was not entitled. We would answer the question reserved in the affirmative, and confirm the judgment of the learned judge dismissing the applicant's appeal against conviction and sentence.

Answer in the affirmative.

Appeal dismissed.

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LAU KEE KO & ANOR. v. PAW NGI SIU

[F.C. (Azmi L.P., Ismail Khan C.J. (Borneo) and Raja Azlan Shah J.) October 22, 1973]

[Kuching — Federal Court Civil Appeal No. 126 of 1972]

Contract — Building contract — Contract made by father as attorney for his son — Claim for damages for fraudulent misrepresentation — Undisclosed principal — Claim for quantum meruit — Plaintiff must not be at fault.

The appellants had entered into a written agreement with the respondent, a building contractor, to construct and complete terrace houses on land belonging to the son of the first appellant and the second appellant. The first appellant held a power of attorney from his son. The respondent did not complete the construction of the terrace houses within the time stipulated and the appellants formally terminated the agreement. Subsequently the respondent served a writ on the appellants claiming $10,236.00 for work done and materials supplied or alternatively for damages for fraudulent misrepresentation and/or breach of contract. The appellants denied fraud and contended that the respondent knew that appellant No. 1 was holding a power of attorney on behalf of his son. They counterclaimed for the sum of $11,500 which they claimed they had paid to prospective purchasers of the houses. The learned trial judge held that fraud was established but did not make a finding with regard to the alternative claim for work done and materials supplied. He dismissed the counterclaim as he found that the appellants had failed to prove the payment of the compensation. The appellants appealed.

Held, allowing the appeal: (1) in this case the respondent had not shown that any personal considerations had entered into the contract making the fact that as alleged he was led to think that he was contracting with the owner when in point of fact he was contracting with the agent a material element in the contract;

(2) therefore on the facts fraud had not been made out;

(3) the learned trial judge was wrong in holding that there had been a breach of contract by the appellants before they purported to terminate the agreement;